

EXPLANATION OF COUNT - APPLIES TO COUNT THREE**DRUG USER IN POSSESSION OF AMMUNITION****(18 U.S.C. §922(g)(3))**

Title 18, United States Code, Section 922(g)(3), makes it a crime for anyone who is an unlawful user of any controlled substance to possess ammunition in, or affecting commerce.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt.

First: That the defendant was an unlawful user of a controlled substance, that is cocaine;

Second: That the defendant knowingly possessed ammunition, that is Sellier and Bellot .45 caliber ammunition, while he was an unlawful user of a controlled substance; and

Third: The ammunition was transported across a state line at some time during or before the defendant's possession of it.

If you have found beyond a reasonable doubt that the ammunition in question was manufactured in a state other than Texas, or a country other than the United States of America, and that the defendant possessed that ammunition in the State of Texas then you may, but are not required to, find that it was transported across a state line.

The term "ammunition" means a projectile surrounded by casing and activated by gun powder to expel a projectile.

To be an “unlawful user” under this statute, one must have engaged in the regular use of a controlled substance over a period of time proximate to or contemporaneous with the possession of the ammunition.

“KNOWINGLY” – TO ACT

The word “knowingly,” as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally, not because of mistake or accident. The purpose of adding the term knowingly is to ensure that no one will be convicted for an act done because of a mistake or accident or other innocent reason.

POSSESSION

Possession, as that term is used in this case, may be of two kinds: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

Possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.